United States Court of Appeals

for the Second Circuit

APPENDIX

74-2448

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 74-2448

UNITED STATES OF AMERICA,

Appellee,

—v.—

MANUEL LECLERES, RAMON GARCIA,
RAFAEL BAEZ, et al.,

Defendants-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

APPENDIX FOR APPELLANT RAFAEL BAEZ

HENRY J. BOITEL
Attorney for Appellant Rafael Baez
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Southern District of New York
Attorney for the United States
of America

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CRIMINAL DOCKET

JUDGE CANNELLA 74 CRIM. 318

TITLE OF CASE	ATTORNEYS
THE UNITED STATES	For U. S.:
vs.	Don D. Buchwald, AUSA
MANUEL LECLERES, a/k/a Paito, a/k/a Manuel Ramos-all (cts.)	264-642
RAMON GARCIA-1,5,7,9	
RAFAEL BAEZ-1,5,7,9	
RAFAEL MATOS-1,5,	
PEDRO ORTAS-1,3,9	For Defendant:

ABSTRACT OF COSTS	AMOUNT	CASH RECEIVED AND DISBURSED: DATE	NAME	RECEIVED	DISBURSED
(01)					
Fine,		11/3/76	[illegible]	5	
Clerk, 4 1,3 5 2		11/4/76	[illegible]		5 -
Marshal,					
Attorney,					
18					
371,2312,2313					
Consp. to transp, conceal & sell stolen autos. (Ct.1)					
Interstate transp. of stolen autos (2,4,6,8)					
Receiv. conceal & dispose of interstate stolen autos (3,5,7,9)					

(Nine Counts)

DATE	PROCEEDINGS
3-29-74	Filed indictment. Ortas B/W ordered.
4-8-74	Deft MANUEL LECLERES present with atty-pleads not guilty, 10 days for motions, bail fixed at $10,000 P.R.B. , deft to be F/P. Case assigned to Judge Cannella. Tenney, J.
4-8-74	Deft RAFAEL MATOS present no atty- Court directs a plea of not guilty 10 days for motions, bail fixed at $10,000 PRB unsecured. Deft to be Fingerprinted & photographed. Tenney, J.
4-8-74	Deft RAMON GARCIA present without atty-Court directs a plea of not guilt 10 days for motions, bail fixed at $10,000 PRB Unsecured. Deft to be F/

DATE	PROCEEDINGS	CLERK'S FEES PLAINTIFF	CLERK'S FEES DEFENDANT
-8-74	DeftRAFAEL BAEZ present without Atty-Court directs a plea of not guilty, 10 days for motions, bail fixed at $10,000 PRB unsecured, deft to be Fingerprinted & photographed. Tenney,J.		
4-18-74	MANUEL LECLERES - Filed notice of appearance by Louis A.Garcia 180 E. 161 St. Bronx, N.Y.		
Apr.22-74	R.BAEZ - Filed financial affdvt.		
May 1-74	RAFAEL BAEZ - Filed notice of appearance by LOUIS R. ALDALA 1250 B'Way NYC 736-8088		
5-2-74	R.MATOS - Filed financial affdvt.		
5-13-74	R.GARCIA - Filed affdvt. & notice of motion to suppress the testimony, to inspect Grand Jury,to dismiss the indictment, to suppress all admissions....		
5-16-74	R.GARCIA) R.BAEZ) Atty's present..Hearing held on motions to suppress-hearing concluded...Denied in part - Dec.Res. in part..Bail cont'd. as to both defts.....Cannella,J.		
5-22-74	Filed Govt's notice of Readiness for trial.		
5-23-74	Filed Govt's memorandum in opposition to motions of R.Garcia and R. Baes to suppress G.J. testimony.		
6-12-74	Filed memorandum & Order. Motion by deft Ramon Garcia for an order suppressing his testimony before the grand jury****is denied....The similar motion by deft Rafael Baez for an order suppressing his testimony before the same grand jury ****is also denied.****Cannella, J..... Mailed notice.		
6-12-74	ALL DEFTS - motion to suppress DENIED in all respects. Trial 7-15-74..Cannella,J.		
6-13-74	R.GARCIA) R.BAEZ) Filed memo endorsed on motion filed 5-13-74...Motion disposed of in accordance with the memorandum and order of this date****Cannella, J.		
6-24-74	Filed affdvt.of D.D.Buchwald,AUSA in support of a writ for N.Ramos.		
7-8-74	Filed transcript of record of proceedings, dated 7-8-74.		
8-22-74	Filed affdvt.of Don D.Buchwald,AUSA in support of a writ.		

DATE	PROCEEDINGS
9-9-74	R.MATOS - Atty.present. Deft withdraws plea of not guilty and PLEADS GUILTY to count 1 only. P.S.I. ordered,sent. on 10-21-74 at 9:30 a.m. Bail cont'd.....Cannella, J.
9-19-74	MANUEL LECLERES) RAFAEL BAEZ) RAMON GARCIA) PEDRO ORTAS) Jury trial begun as to all defts before Cannella, J.
9-20-74	Trial cont'd.
9-23-74	Trial cont'd.
9-24-74	Trial cont'd.
9-25-74	Trial cont'd.
9-27-74	Trial cont'd.
9-30-74	Trial cont'd...COUNT 5 DISMISSED AS TO GARCIA & BAEZ
10-1-74	Trial cont'd.
10-2-74	Trial cont'd. & concluded Jury Verdict Deft LECLERES Guilty on Cts.1.2.3.4.5.8.& 9 NOT GUILTY 6 & 7 Deft BAEZ-GUILTY on Cts.1,7 & 9....Deft GARCIA Guilty on Cts.1,7 & 9 Deft ORTAS Guilty 1,3 & 9...All defts reserve right to make motion at time of sentence....ON 11-6-74 10 a.m. Rm.35 Bail cont'd as to all deft's... Cannella, J.....
10-8-74	PEDRO ORTAS - Filed following papers recv'd from magistrate, docket sheet, warrant, disposition sheet, notice of appearance and appearance bond
10-22-74	RAFAEL MATOS - Filed Judgment(Atty.John Curley,present)It is adjudged Imposition of sentence is suspended..Deft is placed on probation for a period of THREE YEARS, subject to the standing probation order of this Court...Special Condition: Deft to cease and desist from fraudulent practices upon New York City Welfare Department and deft to make known to that Dept those which have occurred in the past...Count 5 is dismissed on motion of deft's counsel with the consent of the Govt.....Cannella,J.....Ent. 10-23-74------
11-6-74	MANUEL LECLERES - Filed Judgment(# 74, 871)Atty.Louis Garcia,present. The deft is committed for imprisonment for a period of FOUR YEARS on each of counts 1,2,3,4,5,8 & 9 to run concurrent with each other and FINED $5,000.00 on count 1 only. Non-committed fine.....Cannella, J.....Ent.11-7-74----------
11-6-74	RAFAEL BAEZ - Filed Judgment(Atty.Louis Aidala,present)the deft is committed for imprisonment for a period of TWO YEARS on each of counts 1,7 & 9 to run concurrent with each other.....CANNELLA, J.....Ent. 11-7-74----------
11-6-74	PEDRO ORTAS-Filed Judgment(Atty.Eugene Evans,present)the deft is committed for imprisonment for a period of EIGHTEEN MONTHS on each of counts 1,3 & 9 to run concurrent with each other....Cannella, J....Ent. 11-7-74--------
11-6-74	MANUEL LECLERES - Filed notice of appeal from Judgment of 11-6-74..Leave to filed appeal in forma pauperis is granted...Cannella,J...Copy to U.S.Atty. and mailed to Louis A.Garcia,Esq. 180 E.161 St.Bronx,N.Y.

----See page 4----

DATE	PROCEEDINGS
1-6-74	RAFAEL BAEZ - Filed notice of appeal from judgment of 11-6-74..Leave to file appeal in forma pauperis is granted..Cannella,J. Copy given to U.S.Atty. and Mailed to Louis Aidala,Esq. 1250 B'Way NYC
1-7-74	RAMON GARCIA - Filed Judgment(Atty.Edward Panzer,present)the deft is committed for imprisonment for a period of TWO YEARS on each of counts 1,7 & 9 to run concurrent with each other, pursuant to Ti.18, U.S.Code, Sec.4208(a)(2)...Bail pending appeal. Cannella, J....Ent.11-8-74--------
11-6-74	R.GARCIA - Filed financial affdvt.
11-7-74	RAMON GARCIA - Filed notice of appeal from judgment of 11-7-74..Copy given to U.S. Atty. and mailed to Edward S.Panzer,Esq. 299 B'Way NYC....Leave to file notice of appeal in forma pauperis is granted....Cannella,J.
11-11-74	Filed transcript of record of proceedings, dated Sept 19, 20, 23, 24, 1974
11-11-74	Filed transcript of record of proceedings, dated Sept. 25, 27, 30, oct. 1, 2, 1974
11-12-74	Filed MANUEL LECLERES - Filed notice of motion for bail pending appeal, to modify sentence pursuant to 18:4208(a)(2)..Ret.11-15-74----------
11-15-74	MANUEL LECLERES - Filed memo endorsed on motion filed 11-12-74...Bail application granted**Bail pending appeal is fixed at $50,000 personal recognizance bond secured by 10%...Decision is reserved on motion to amend sentence***** Cannella, J.....

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA : A 5

- v - : INDICTMENT

MANUEL LECLERES, a/k/a Paito, a/k/a Manuel Ramos, a/k/a Juaquin P. Martinez, RAFAEL MATOS, RAFAEL BAEZ, RAMON GARCIA and PEDRO ORTAS, : 74 Cr.

Defendants. :

COUNT ONE

The Grand Jury charges:

1. From on or about January 1, 1972, up to and including the date of the filing of this Indictment, in the Southern District of New York and elsewhere, MANUEL LECLERES, a/k/a Paito, a/k/a Manuel Ramos, a/k/a Juaquin P. Martinez, RAFAEL MATOS, RAFAEL BAEZ, RAMON GARCIA and PEDRO ORTAS, the defendants, unlawfully, wilfully and knowingly, combined, conspired, confederated and agreed together, and with each other and with other persons to the Grand Jury unknown, to commit offenses against the United States, to wit, to violate Title 18, United States Code, Sections 2312 and 2313.

2. It was a part of said conspiracy that the defendants would steal or cause to be stolen motor vehicles in states other than New York and transport said motor vehicles in interstate commerce into the State of New York.

3. It was further a part of said conspiracy that the defendants would conceal and store the aforementioned stolen motor vehicles at the P & M Auto Repair located at 832 Melrose Avenue, Bronx, New York (operated by the defendant PEDRO ORTAS), or at the R & R Auto Repair, located at 602 Wales Avenue, Bronx, New York (operated by the defendants RAFAEL BAEZ and RAMON GARCIA).

4. It was further a part of said conspiracy that the defendants would alter the appearance of the aforementioned stolen motor vehicles, or obliterate the confidential vehicle identification numbers of said motor vehicles, or replace the public vehicle identification numbers of said motor vehicles with vehicle identification numbers obtained from other vehicles, and thereafter would sell or otherwise dispose of said stolen motor vehicles.

OVERT ACTS

In furtherance of said conspiracy and to effect the objects thereof, the following overt acts were committed in the Southern District of New York and elsewhere:

1. On or about November 19, 1972, MANUEL LECLERES, the defendant, travelled from Bridgeport, Connecticut, to the Bronx, New York;

2. On or about November 20, 1972, PEDRO ORTAS, the defendant, painted the top of a car;

3. In or about January, 1973, RAFAEL MATOS, the defendant, purchased a damaged 1967 Mercury Cougar;

4. On or about April 15, 1972, RAMON GARCIA, the defendant, sold a 1971 Dodge Swinger; and

5. In or about April, 1973, RAMON GARCIA, the defendant, changed the Vehicle Identification Number of a 1957 Ford Thunderbird.

(Title 18, United States Code, Section 3.1.)

COUNT TWO

The Grand Jury further charges:

On or about November 19, 1972, in the Southern District of New York, MANUEL LECLERES, a/k/a Paito, a/k/a Manuel Ramos, a/k/a Juaquin P. Martinez, the defendant, unlawfully, wilfully and knowingly did transport in interstate commerce from Bridgeport, Connecticut to New York, New York, a stolen motor vehicle, to wit, a 1964 Cadillac Sedan, Vehicle Identification No. 64J138193, knowing the same to have been stolen.

(Title 18, United States Code, Sections 2312 and 2.)

COUNT THREE

The Grand Jury further charges:

From on or about November 19, 1972, through on or about March 15, 1973, in the Southern District of New York, MANUEL LECLERES, a/k/a Paito, a/k/a Manuel Ramos, a/k/a Juaquin P. Martinez, and PEDRO ORTAS, the defendants, unlawfully, wilfully and knowingly did receive, conceal and store a stolen motor vehicle, to wit, a 1964 Cadillac Sedan, Vehicle Identification Number 64J138193, which was a part of, and moving as, interstate commerce from Bridgeport, Connecticut, to New York, New York, knowing the same to have been stolen.

(Title 18, United States Code, Sections 2313 and 2.)

COUNT FOUR

The Grand Jury further charges:

On or about February 6, 1973, in the Southern District of New York, MANUEL LECLERES, a/k/a Paito, a/k/a Manuel Ramos, a/k/a Juaquin P. Martinez, the defendant, unlawfully, wilfully and knowingly did transport in interstate commerce from Bridgeport, Connecticut, to New York, New York, a stolen motor vehicle, to wit, a 1967 Mercury Cougar, Vehicle Identification No. 7F93C640793, knowing the same to have been stolen.

(Title 18, United States Code, Sections 2312 and 2.)

COUNT FIVE

The Grand Jury further charges:

From on or about February 6, 1973, through on or about April 17, 1973, in the Southern District of New York, MANUEL LECLERES, a/k/a Paito, a/k/a Manuel Ramos, a/k/a Juaquin P. Martinez, RAFAEL MATOS, RAFAEL BAEZ and RAMON GARCIA, the defendants, unlawfully, wilfully and knowingly did receive, conceal and store a stolen motor vehicle, to wit, a 1967 Mercury Cougar, Vehicle Identification No. 7F93C640793, which was a part of, and moving as, interstate commerce from Bridgeport, Connecticut to New York, New York, knowing the same to have been stolen.

(Title 18, United States Code, Sections 2313, and 2.)

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COUNT SIX

The Grand Jury further charges:

On or about March 14, 1972, in the Southern District of New York, MANUEL LECLERES, a/k/a Paito, a/k/a Manuel Ramos, a/k/a Juaquin P. Martinez, the defendant, unlawfully, willfully and knowingly did transport in interstate commerce from East Boston, Massachusetts, to New York, New York, a stolen motor vehicle, to wit, a 1971 Dodge Swinger, Vehicle Identification No. LH23C1R289197, knowing the same to have been stolen.

(Title 18, United States Code, Sections 2312 and 2.)

COUNT SEVEN

The Grand Jury further charges:

From on or about March 14, 1972, through on or about April 15, 1972, in the Southern District of New York, MANUEL LECLERES, a/k/a Paito, a/k/a Manuel Ramos, a/k/a Juaquin P. Martinez, RAFAEL BAEZ and RAMON GARCIA, the defendants, unlawfully, willfully and knowingly did receive, conceal, store, sell and dispose of a stolen vehicle, to wit, a 1971 Dodge Singer, Vehicle Identification No. LH23C1R289197, which was a part of, and moving as interstate commerce from East Boston, Massachusetts, to New York, New York, knowing the same to have been stolen.

(Title 18, United States Code, Sections 2313 and 2.)

COUNT EIGHT

The Grand Jury further charges:

On or about December 30, 1972, in the Southern District of New York, MANUEL LECLERES, a/k/a Paito, a/k/a Manuel Ramos, a/k/a Juaquin P. Martinez, the defendant, unlawfully, wilfully and knowingly did transport in interstate commerce from Bridgeport, Connecticut to New York, New York, a stolen motor vehicle, to wit, a 1957 Ford Thunderbird, Vehicle Identification No. D7FH252614, knowing the same to have been stolen.

(Title 18, United States Code, Sections 2312 and 2.)

COUNT NINE

The Grand Jury further charges:

From on or about December 30, 1972, through on or about August 13, 1973, in the Southern District of New York, MANUEL LECLERES, a/k/a Paito, a/k/a Manuel Ramos, a/k/a Juaquin P. Martinez, RAFAEL BAEZ, RAMON GARCIA and PEDRO ORTAS, the defendants, unlawfully, wilfully and knowingly did receive, conceal and store a stolen motor vehicle, to wit, a 1957 Ford Thunderbird, of, and moving as, interstate commerce from Bridgeport, Connecticut to New York, New York, knowing the same to have been stolen.

(Title 18, United States Code, Sections 2313 and 2.)

UNITED STATES OF AMERICA

vs. 74 Cr. 318

MANUEL LECLERES, et al

October 2, 1974
10:00 a.m.

(Trial continued.)

THE COURT: Are we all set?

MR. EVANS: My client has not yet arrived. I see it's just 10 o'clock.

THE COURT: All right. We will wait for him.

MR. EVANS: I apologize for him.

MR. PANZER: Yesterday the U. S. Attorney referred to the concept of recent possession of an automobile and it was something like a one-month lapse in between the time the car was stolen and it was found, I believe, at the R & R Garage, which is on Wales Avenue.

I think a month is a little long for that inference to be drawn. If your Honor is going to charge it, I want your Honor to be aware --

THE COURT: I will tell you how I am going to charge it. I take that length of period into consideration. I will tell you what it is.

MR. EVANS: Your Honor, in reference to the

examination by Ortas by Agent Bantel, the District Attorney made reference to that and I want -- I think the jury should be informed it is not in evidence -- is that correct?

MR. BUCHWALD: It certainly was in evidence.

MR. EVANS: I don't think it was in evidence.

THE COURT: Here's what I intend to say, Mr. Panzer, and you can take an exception if you want to:

Possession of a motor vehicle recently stolen, if not satisfactorily explained, is a circumstance in which you may reasonably draw the inference that the person in possession knew that the motor vehicle had been stolen.

The term "recently" is a relative term which has no fixed meaning. Whether a motor vehicle may be considered recently stolen depends upon all the facts and circumstances shown by the evidence in this case.

The longer the period of time since the theft, the weaker the inference which may be drawn from an unexplained possession.

If you find from the evidence beyond a reasonable doubt that the motor vehicle in the indictment was stolen and while recently stolen the motor vehicle was in the possession of the defendant under consideration, you would be justified in drawing from those facts the inference that the defendant had knowledge that it had been stolen unless,

possession of the recently stolen motor vehicle is explained to your satisfaction by other facts in evidence in the case.

In considering whether or not possession of a recently stolen motor vehicle is satisfactorily explained, you will bear in mind the exercise of constitutional rights the accused had need to take the witness stand and testify.

Possession may be satisfactorily explained through other evidence other than testimony of the accused. It is your exclusive province to determine whether the facts warrants the inference which the law permits you to draw from the possession of a recently stolen motor vehicle.

So I leave it to their judgment to determine whether it is recently, and if it isn't recently they will disregard, if it is recently, in their opinion they will have to give it the weight they feel necessary.

Your problem, as I understand it --

MR. EVANS: I thought it was one of the documents that was not in evidence. My recollection is when I started --

THE COURT: It is easy to find out. What number is it.

MR. BUCHWALD: The question was put to Mr. Bantel on the last day of Mr. Bantel's testimony as to whether questions he had put to Mr. Ortas as to the color of the

automobile, Bantel testified that Ortas --

THE COURT: That was here in the courtroom?

MR. BUCHWALD: That was live testimony in the courtroom.

THE COURT: It is what he said to Bantel when Bantel was questioning him.

(Jury present.)

THE COURT: Members of the jury, we come to the last stage of this proceeding insofar as it involves the Court and the lawyers.

The rest of the case will be in your hands. This is called the charge. In this portion of the case it becomes my duty to inform you as to the various aspects of the laws involved in this case and I will summarize in effect what I am doing at this time, and in the beginning I will discuss the facts very briefly since the lawyers have agreed amongst themselves that they would do that. Sometimes the Judge marshals the evidence.

In this particular case, the lawyers made a choice that they would marshal the evidence and they have done it very well, and at great length, as you realized after having listened to them yesterday.

I will then discuss various situations that arise as a result of our laws and discuss what evidence is and

what evidence is not and how you evaluate the evidence.

I will then define certain terms that appear in these various documents and in the indictment. I will describe to you the law as it applies to the conspiracy charge, and then we will get to the indictment itself and that's the reason for this board, and we will go through the nine counts and I will indicate to you what are the elements necessary in order to convict on these nine counts.

And after that, there are a few remarks I make, which have actually nothing to do with the evidence, but have something to do with your duties and from that point on, I will listen to the lawyers for the last time.

If they have any exceptions to anything I have said or if they want to suggest anything, I listen to them once more and then I may say something to you after I listen to them. Sometimes I do, sometimes I don't. That's generally the area we are going to be in this morning.

At the outset I want to thank both sides in this case, both the United States Attorney and the distinguished counsel that appear here for the defendants, Mr. Garcia, Mr. Aidala, Mr. Panzer and Mr. Evans.

They have been of great assistance to the Court. Many times at the side bar, where we discuss law, they have contributed to the conduct of this case, and on my behalf and

on your behalf, I thank them for the manner in which they have conducted themselves. I am sure you will agree with me they have acted as gentlemen, even though there is no question at all that this is an adversary proceeding, and they are in effect fighting that battle that Mr. Panzer was talking about.

So that I thank them for you and I thank them on your behalf. I also thank you because you have paid attention to this case and you have listened carefully and I am sure that your verdict, being in accord with your conscience, will be a good one, and that I have no hesitancy in making such judgment at this point.

The presentation of the evidence in this case was done through a large number of witnesses, almost entirely produced by the Government.

Now, a number of witnesses of course has nothing to do with who should prevail in the case, because if that were the case, there would be no need for a jury. We would simply say the Government produced 22 witnesses, the defendant produced one and therefore the Government prevails. That isn't so. It is the quality of the testimony that's adduced, and it is what convinces you regardless of the number of witnesses as to where the truth lies that is prevailing in this case.

Now, the case is very generally presented in this fashion:

Four automobile owners came down and testified that their car was stolen. About that there seems to be no dispute although it must be found as a fact in the case before you can proceed at all. It involved four cars, a Cadillac, a Swinger, a Cougar and a T-Bird.

Amongst the FBI witnesses there were about six or seven. Three of them were really concerned with photographs which they took. The other three or four, they essentially were talking about things that they seized at various places and the cars that they seized.

Some of them talked to the defendants and certain statements were made to them. That's essentially the nature of that.

Then there were three policemen and what they talked about was seizing some cars. Then there was one buyer, Rivera. She bought one of these cars. And then there were three persons, two of whom were what I would call accomplices, as a matter of law, and one was a defendant who pleaded guilty and also indicated by the Government witness.

Then we have two people from the bank. One about the teller's check and the other about the buyer's

bankbook in that savings and loan bank.

And lastly, you have a number of stipulations. Essentially the stipulations concern motor registrations that were filed up in Albany, as well as, I think something about the grand jury testimony that was stipulated to.

Now, as you reflect on this, it becomes very clear I think, and almost immediately that there are areas here where these parties do agree. There is no question about it.

However, there are very many, many areas where they don't agree. As a matter of fact, they are rather a juxtaposition, 180 degree angle, completely opposite one another.

This raises questions of fact. Questions of fact could be determined by the Court if the parties desire the Court to do that, but it is not usual in criminal cases. The usual thing is for a jury to pass on questions of fact. That's why you have been chosen here. If you remember you took two oaths here, one to tell the truth, secondly, to decide this case on the evidence and the law.

That's the oath that you are fulfilling at this time. To decide this case on the evidence and the law, as it happened here in the courtroom, not something you know from outside or something some lawyer said not under oath.

There are a lot of things said by the lawyers here

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not under oath which were really facts they were trying to bring to your attention. Those matters are not really evidence. They were not sworn. Anything the Court says about this, the facts of this case, isn't evidence. As a matter of fact, I was stupid enough to do it once or twice and I immediately pulled back my horns and said, "Wait a minute, I am not supposed to do that, and I don't intend to do it, and forget about what I say about the facts in the case."

In other words, the lawyers nor the Court determine the facts in the case. You are the sole and sovereign judges of the facts, just the same as if you were one of those bathrobes that I have on. And you are the ones that are going to determine the credibility of the witnesses. You are the ones that are going to determine where the truth lies; it isn't the lawyers, it isn't the Court, we are trying to assist you but in the last determination the judgment is yours.

Now, that being so, you must accept from the Court the law. Once having determined the facts in your own mind, you then must determine what law should apply and you get that from the Court, and it is not your province to question the law, because if you have some question about the law, and sometimes jurors have good questions about the law, they

don't like the law, and sometimes I am inclined to agree with them. But we can't do that, we can't question the law, because if you want to question the law, what you do is you write to your Congressman in federal law, and tell him look, this is a stupid law, change it, because no appellate court could ever determine what you made your judgment on if you use your own law. So you are obliged to use the law that the Court gives to you and apply it to the facts.

The grand jury in this District is an accusatory body. They don't try cases. They only listen to the United States Attorney and when he comes in with certain witnesses and certain facts, they determine essentially two things:

One number, is it probable that a crime was committed; number two, if it is probable that a crime was committed, who committed it?

And when they make a determination as to that, they hand down what is called a true bill, or more familiarly known as an indictment, and if they are not satisfied they simply say no true bill and there is no indictment.

The indictment then is an instrument which starts the proceeding; it is the accusation. It is evidence of nothing, only that the grand jury acted on the evidence

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before it.

At some point in time the defendant then comes into the court and listens. He gets a copy of it. The first thing the Judge does is give him a copy of it? Do you read English? Do you understand English? Are you mentally alert? Do you know what you are doing? Do you have a lawyer? Do you have the advice of a lawyer? All right, here's the charge now.

What do you say to this charge? This is the accusation. In this particular case, these defendants plead not guilty, each one of them, as to the charge which appears in this indictment as against them. They are not all named in all the counts except Lecleres. He's named in all the counts. The other defendants are not named in all the counts, so they only pleaded not guilty to the portions which applied to them.

Now, we then start on that proposition with this: that every defendant in a criminal case is presumed innocent, and the presumption of innocence remains with him unless and until the Government satisfies you by credible evidence beyond a reasonable doubt that the particular defendant is guilty as to a particular charge that you happen to have under consideration.

The burden of proof always remains with the

Government. It never shifts to the defendant. The burden remains in the Government throughout the trial, even now while I am talking to you, and in the jury room.

And you may not convict the defendant unless and until you feel that the Government has satisfied that burden of proof.

In the trial of the case, the defendant is entitled for you to consider that burden of proof not only upon the evidence that is presented by the Government, but upon the cross examination of the witnesses that appear and stipulations it can relate. For example, on the lack of evidence in the case, because regardless of any element in the case, and you will recall that I told you the defendant need do nothing in the case. He need not take the stand. He need not produce evidence. He need not produce exhibits. He need not take part in the case. And even though he does that, the fact that he does that may not be used against him.

The burden still remains with the Government. No presumption of guilt may arise therefrom, no inference of guilt may arise therefrom.

So that in this particular case, for example, one defendant has taken the stand. He has a right to take the stand. When he does take the stand, he is a witness, just like anybody else. However, he is subject to cross

examination. He has no special privileges, no more than I explained to you when you were being selected as a Government official, or any other witness have any special privilege. They are a witness. You look into them the same as you would any other witness.

The way that a case proceeds in court is by the presentation of evidence. The Government presents evidence and if the defendants desire to do so, they present evidence, and it is the evidence that you hear in the courtroom that binds you, as I told you once before.

Now, evidence may be described in a great number of ways. The first way I will describe it to you would be by its quality and its quantity.

The quality of the evidence must be what is called credible evidence. That simply means believable. The quantity of the evidence must be beyond a reasonable doubt. That is the amount of the evidence or the quantum of evidence.

Now, a reasonable doubt, just as one of the lawyers indicated to you in their remarks, is defined actually by the words themselves, the doubt based upon reason.

A reasonable doubt means a doubt that is based upon reason and must be substantial rather than a speculative doubt. It must be sufficient to cause a reasonably prudent person to hesitate to act in the more important

affairs of his life. Such a doubt can arise from the evidence produced during the trial or from the lack of evidence produced during the trial.

Another way of describing evidence is this way. The evidence in the case is comprised of a number of things. The first I would call your attention to is testimony. That means the witness appears here, he is sworn, and then he describes to you, under oath, what he knows as a result of the use of his senses. It involves any natural inference that flows from that testimony. It involves anything that is brought out on cross examination or redirect examination or recross examination, or anything that the witness has said under oath in your presence.

The second item of evidence, describing it in this fashion, are exhibits, and there are a number of exhibits in this case. For example, photographs. The documents about the buying of the car. Everything that has been marked in evidence here. All those items are evidence, and they are to be considered by you in making a determination in this case.

There is a caveat with reference to this, and that is this. Some of the exhibits which were marked in evidence in this case were only marked for identification. They are not in evidence, and you may not speculate upon

what you think would have been in there if you had been allowed to look at it.

Only the things that are in evidence may be considered by you.

Another thing that is evidence in this way of describing evidence, are stipulations which have been entered into between the parties. That simply means they have agreed among themselves that there is no need to dispute this. We will agree this is a fact and the two things that come to mind are essentially the automobile registrations, which are in file up in Albany and the grand jury testimony, namely, that the person that took that testimony took it accurately and the answers and questions that appear thereon are true and accurate. That is your stipulation.

The last thing which I would describe in the particular area is called judicial notice and the Court takes judicial notice of such matters, that are so well known that they require no proof. For example, in this particular case I take judicial notice of the fact that this location up here at 602 Wales Avenue in the Bronx, is within this District and therefore, we have the jurisdiction and you have the right to sit as a jury, or in this kind of a case, because it is within our area.

I also take judicial notice of the fact that

Connecticut is a state and it is a separate state from the State of New York. So that if a car, for example, is stolen, as three of these were, in Connecticut, Bridgeport, and one in Massachusetts, and that car is then found in New York, that clearly indicates that there are two separate states involved and one of the requirements under certain sections of the law here, and mostly all of them, I think, all of the indictments, is that interstate commerce be involved, so I take judicial notice that there are such exhibits as the State of Connecticut and the State of Massachusetts and that they are separate from the State of New York.

Another way of describing evidence is to divide it into what is called direct evidence and circumstantial evidence.

Now, we as laymen, sometimes think that direct evidence is better than circumstantial evidence. Direct evidence is the evidence of the person who is there and has seen something and reports it, an eyewitness. Circumstantial evidence on the other hand, is the proof of the chain of facts and circumstances which indicates to you the guilt or innocence of the defendant. The law makes no distinction between the weight to be given to either direct or circumstantial evidence. It requires only that you, after weighing

all the evidence, must be convinced of the guilt of the defendant beyond a reasonable doubt before he can be convicted.

I might expand a little on circumstantial evidence, because a lot of what is concerned with here does involve circumstantial evidence, although there is direct evidence also.

But a lot of the things that are involved here require mental operation. For example, knowledge requires mental operation. To act wilfully requires mental operation. To act unlawfully requires mental operation. And to act with specific intent to commit a crime requires circumstantial evidence, because they are mental operations and they cannot be seen at this point, unless you have what you call an X-ray, or some people have a machine that they listen to and they hear the brain, but we don't know what goes on in the person's mind and so circumstantial evidence becomes important.

Sometimes circumstantial evidence is more persuasive than direct evidence. I recall at one time Joe Louis had lost the fight to a man by the name of Max Schmelling. He got a rematch here in New York, at Madison Square Garden. There were thousands of people there. The seats were going for $100, which at that time was quite a sizeable amount.

This little fellow had a $100 seat right down near the ringside and he came into the stadium into Madison Square Garden and as he walked down he could see the referee was in the ring and he could see Joe Louis. He could see Max Schmelling. He could see the crowd and so forth, and just as he started to go into his seat, which was about four or five rows behind the ringside, all the people jumped up, and he is a little fellow, and he could not see anything. And the next thing he knew--this was the very famous fight, which I think my contemporaries will recall--Mayor Walker saying Joe Louis laid a red rose on the tomb of Lincoln, because in six seconds, Joe Louis had knocked out Max Schmeling.

The little guy who was in there getting his way in through the aisle, didn't see that, but when he stood up and finally looked, he saw Schmelling lying flat in the ring.

He had no direct evidence that Louis had knocked out Schmelling. It is circumstantial evidence. He had seen the two of them in the ring. He had heard the bell ring. He had seen the crowd rise. He had gotten into the aisle, when he looked, one fellow was lying down flat on his back and the other fellow was standing up.

So he could testify from circumstantial evidence that Louis knocked out Schmelling even though he didn't see it.

So circumstantial evidence is not an abuse. Circumstantial evidence is recognized by the law then it is used continually. As a matter of fact, in our daily lives we did the same thing. We rely on it very heavily.

Now, some examples were given by different lawyers in this case about circumstantial evidence, and they were interesting, and I am sure you listened very carefully, and they were well presented.

My addition to this particular phase of describing circumstantial evidence in addition to what the lawyers have done is this:

Another example of how do you know something without actually seeing it. Well, you remember Robinson Crusoe's story. He was on an island because he had been shipwrecked and he rescued some stuff and he brought it on the island, and finally, he found out he was in a very beautiful place. And he was living very well and everything was going great. But he was very sad about having no companionship. And lo and behold, one day he goes down to the seashore and he sees human footprints in the sand.

Now, he had not seen a human on the island at all, but he quickly made up his mind and determined from circumstantial evidence that there was a human on the island with him and he sought him out.

Well, now, how do you arrive at the conclusion from circumstantial evidence? Suppose Robinson Crusoe, instead of finding footprints on the sand, had found a bunch of banana skins and had found some leaves which appeared to be made into a bed, could he then determine that it was a human who was on the island?

Not very well, because that could have been an orangutang, an ape, some sort of animal who had eaten bananas

just the same as a human being could. When he saw human footprints which he recognized as human footprints, that was a pretty good piece of circumstantial evidence.

So when you are talking about circumstantial evidence, you not only talk about the amount and number of circumstantial evidence pieces, but you also talk about the quality of those pieces, the quality of the circumstantial evidence.

In this case, you will have to make a careful examination of it because the Government relies on circumstantial evidence to some degree, and you will have to examine that circumstantial evidence and determine whether you come to the same conclusion as the Government, or the same conclusion as the defendants.

This is a judgment for you to make, because in examining the testimony you will examine all the evidence in the case, both direct and circumstantial, and come to a determination as to where the truth lies.

Now, I have described to you different ways of determining what evidence is and the way it is described in different fashions, and now I will indicate to you, because it is important for you to kow, what is not evidence, because youmay not use in your judgment matters which are not evidence. Only matters which are evidence and which have been

received in evidence during the course of the trial.

Now, the first thing I have already invited your attention to as not being evidence, is the indictment. That is simply a charge. That is the only evidence that it is a charge. It is not evidence of a guilt of any defendant simply because some statement appears in the indictment.

The second thing is the comments made by the lawyers and the Court. Anything that was said by the lawyers or by the Court is not evidence. We were not sworn, and therefore we did not testify in this case.

The next thing is questions which were asked and no answer was ever given. You will recall this happened during the course of the trial once, and to put it in a fashion that you will quickly understand, I used the example of when the man was asked when did you stop beating your wife. There is no proof that he ever was beating his wife. It was assumed in the question.

A lot of questions that were asked here assumed facts. Unless they have been proven to your satisfaction beyond a reasonable doubt, you may not consider them because in the lawsuit the answers are the evidence, not the questions.

In addition to that certain matters were stricken after an answer was made, where some lawyer objected and I

said yes, you are right, and I granted the motion.

You are not to consider that portion of it which was stricken.

The Court made some comments during the course of this trial which I have already told you once to disregard. I told you at the time they were made to disregard and I tell you now for the last time, to disregard them. Neither the Court's comments, nor the Court's questions, for example, are more important than anything else. The Court has no special privilege. I am just an umpire here to make sure that the train runs on the right track.

So that essentially you are to disregard any opinion you think the Court has. I have no opinion because I know that your opinion is the one that counts and I don't intend to trespass on that in any fashion whasoever.

The rulings made by the Court on questions, some of you may have kept score on that. Sometimes I decided in favor of the Government, sometimes I decided in favor of the defendants. That means absolutely nothing to you as far as determining what the facts are in this case. Those were rulings of law and do not concern you in any shape or form.

Now, how do you evaluate the testimony in the case? Somebody said you know, we don't have a machine for doing this. We depend on you. And that is so. I would

invite your attention to some norms which Anglo-Saxon jurys have used for many years, and American jurys.

First I call your attention to the demeanor of the witness. Some of them are very evident. For example, in the case of Perez, one of the lawyers indicated he kept his head down and he did this and did that. That's his demeanor. That is the way he acted. Each witness has his own demeanor. Each witness affects you in some fashion. Just the same as you do in your everyday life, you examine the way he acted on the stand and the way he conducted himself, whether or not he asked questions to borrow and beg time to do something about the answer he is supposed to give.

Essentially what we are saying to you is that you use your common sense. In other words, each one of you every day in your life, exercise judgment, make judgments and you do it upon some mental process of your own and you use what you yourself feel is common sense.

We expect you as a jury to use that same fine discernment, that same fine care in arriving at a judgment in this case, as you would in matters of great importance to you in your own home, buying a house or even a trivial matter like buying a brush from the Fuller Brush Man, or something like that.

You size him up, you look at the material. You go on your past experience and find out what you know about this and then you make a judgment.

Now, in making a judgment, one of the important things that a jury must look into is the interest that a particular party, or a witness, has in testifying, and in this case it is of particular imporance because a number of witnesses have been examined very thoroughly before you, you know their background and you know what they have been through and you must determine whether or not you are going to believe them, or if you are going to believe them, how much of it you are going to believe.

Now, I indicated earlier who the witnesses were generally, and I will go over that with you once more. The four automobile owners who came down and testified, they have no interest really in the case. Years have gone by and they have gotten their cars back, many of them. They simply came down and said, "Well, the car was stolen." All right, keep that interest in mind that they have as far as they are concerned.

The FBI men are all Government employees. They have a job to do. They get efficiency ratings. They have pride in performance, but it is something like evaluating a witness. Simply because a witness has a job, for example,

you can't believe him any more or less. Similarly when you look at an employee, there are many employees who work for people who are not particularly enarmoured of their employer, but consider the background of these people, consider their interest and in the light of the interest, you will determine the testimony.

As far as three of them are concerned, they came in with some pictures. What about them? What would interest have to do with that essentially?

The pictures either show what was there or they don't show what was there. And the seizures, well the matters were either seized or were not seized. There is no contention here as far as I am aware, that these were planted on these people.

I am not aware of that. If you think that is the case, then you look into it with that interest in mind.

The three policemen, they seized some cars that were on the street, or wherever they were, and brought them into the pound.

Miss Rivera, now this was a peculiar witness. Both sides, or at least some of the sides, or one side, the Government, and at least Mr. Panzer, didn't think much of this witness. Frankly, I don't know. I asked her a couple of questions which sort of indicated that I didn't think much

of her. As I told you before, it is not my judgment to make. But think for a minute. Reflect on this witness. What have we really involved here? What could you say the most about her that was wrong about her? She didn't have a bill of sale? That bothered you. She knew about this. She went up there and bought a hot car and she knew it was a hot car and she couldn't care less whether she got a billof sale or didn't. What has that to do with the case as far as the elements of the crime are concerned? You don't have to sell to a legal buyer in order to violate this law. You can sell to an illegal buyer to violate this law. You could sell it to another crook and you would be violating the law.

So far as Rivera is concerned, even if you don't believe her statement as to how she came to get the car, the fact of the matter is that she did have the car and she did have it for a year and she turned it over to the pound and she didn't get a nickel back, and she paid some money for it.

And that car was stolen in Connecticut and wound up in New York, bought from somebody up at 602 Wales Avenue, whether it was Garcia or somebody else that Garcia said he saw her with outside there.

So the car changed hands from the truthful owner

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to a person whom you may say really didn't deserve to own the car.

What was her interest then in testifying here? Well, the authorities knew that she had the stolen car, the authorities knew that she had turned it into the police, and so they produced her as one of the buyers. Who she bought it from, you will have to determine that. I don't know who she brought it from because I don't make that judgment. You will have to make a judgment. Did she buy it from Garcia as she indicated, or did she buy it from some other bird outside that Garcia had nothing to do with? Someone whom she was talking to out there? If that's so, why did Baez wind up with the $1200 in his account? Do you think it is the Government's position which is justified here that she bought the car and she bought it from Garcia, or do you think that Mr.Aidala's explanation of it that Baez wound up with this check and he could have wound up with it for a perfectly innocent reason, that she might have had some repair works and she gave the money over so the repairs could be paid and she got the rest of the money. These are judgments for you to make and these are interests for you to examine of these various witnesses.

Now, the bank people, they came here with records. I don't know what possible interest they could have to

either help or hurt anybody. They just came in with their records.

We then get to the three crooks, as they have been described, and I think they are crooks. Two of them are accomplices. They were not named as defendants in the case. One, Matos, was a defendant in the case. Now, these fellows have all kinds of impediments against them. They are informers, they are accomplices, they are seemy characters. Nobody disputes amongst the defendants even, because some of them even said, we are convinced that these three crooks had this conspiracy going and they had the conspiracy going from stealing cars from Connecticut down to New York.

There is no question but we had nothing to do with it. That was their thinking, not our thinking. They are three crooks. They are three seemy characters and they are not worthy of belief.

Well, let's start in with the concept of an accomplice. What is an accomplice? What do we mean by an accomplice? An accomplice is one who voluntarily participates in the commission or planning of a crime. There is no question that the Government witness Ramos, Matos and Perez were admittedly participants in the crime charged in the indictment. Matos in addition is a defendant. The testimony of an accomplice is admissible since many times crimes

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could not be proven unless their testimony was allowed. However, the testimony of an accomplice must be closely examined and weighed with great care. In the federal court defendants may be convicted upon the uncorroborated testimony of an accomplice, even though it is not corroborated by any other evidence. But in order to do so you must believe the testimony of the accomplice to be true beyond a reasonable doubt.

In this case, however, the Government has argued, and it is up to you to make a judgment, that there is corroboration of these witnesses, not only by the physical evidence that appears in this case, namely, the dent puller, the rivets, the various plates, the book, the papers or documents that have been produced and others of a like nature, and in addition to that the Government position is that the defendant's upon being questioned have, in effect, corroborated these three witnesses.

But it is your judgment to make as to whether you will believe them or not. One of them, I think, or maybe more than one of them admitted that he perjured himself. He lied in the grand jury or he lied here, I dont recall which. But any of these witnesses, any of these three or any witness who committed an act of perjury, you must consider his testimony with care and scrutinize it more carefully than you

would have an ordinary witness, because he has admitted that he has perjured himself under oath.

Some of the statements or some of the witnesses have made what we call inconsistent statements, and on cross examination you heard the lawyers sometimes have the witness say, yes, I did say that but this is my recollection now, and they are inconsistent. Well, as far as inconsistent statements are concerned, the testimony of a witness may be discredited or impeached by showing that he previously made statements which are inconsistent with his present testimony.

The earlier contradictory statements are admissible only to impeach the credibility of the witness, not to establish the truth of the statement. It is in your province to determine the credibility of the witness, if any, which should be given to that witness who has testified and who has been impeached in this fashion.

We are talking at this stage about evaluating the testimony and how do you determine where the truth lies.

It is the claim of the Government that the evidence introduced against the defendants indicates that in certain cases some of these defendants made what are called exculpatory statements. In other words, statements which would indicate that they do have nothing to do with this particular

crime or crimes, and to indicate that in effect he was innocent of any charge which is charged in this indictment. Evidence contradicting such statement has also been introduced during the course of the trial. If you find that the exculpatory statements were untrue in that the defendants who made them made them voluntarily with the knowledge that they were false, you may consider the statements as circumstantial evidence of the defendants' consciousness of guilt.

You will recall that a number of witnesses were categorized in this fashion by Mr. Buchwald, and, of course, the defendants deny that any of this is exculpatory. They deny that any of these staements in any way can be treated in this fashion, but that is a judgment for you to make.

And you will determine whether or not any statements are exculpatory, and if they are and they are untrue, then you may determine whether that indicates that there is a consciousness of guilt on the part of that particular defendant.

The next principle of law which applies in this area is this, in evaluating testimony.

There are a number of ladies on the jury and I would give you an example which I think they would understand, although it happens to the men, but they are the ones that finally wind up with this. This concept is this:

If a witness has falsely testified to a material fact, you must disregard that portion of the testimony which you believe to be false. On the other hand, you may accept that part of it which you believe to be true or you may disregard the entire testimony of that witness. That is a judgment for you to make.

Now, what are the examples I was talking about? Well, if a lady gets up in the morning and she is making omelettes for the family and she puts a rotten egg in amongst four or five other eggs that she is cooking, when she starts to cook that she immediately smells that it is not good and she throws it away, the whole thing. On the other hand, if she burns a piece of toast and there is some brown part on it, why it is not unusual -- I have known it to happen -- that the wife will scrape off the burnt part and the husband's wind up with a piece of toast which has been scraped. That is the way this part true-part false rule works. You can accept all of it, disregard all of it, you can accept part of it and disregard the rest. The part which you know is false, however, you may not accept.

Now, some of the witnesses in this case have been convicted of crimes, and I already told you about that at one juncture of the case but I will explain it to you again. If a witness has been convicted of a crime, the fact that he

has been convicted of a felony may be brought to your attention, and the purpose of bringing it to your attention is that you may then determine whether or not you believe him from the fact of his conviction.

Now, the conviction must be essentially of a matter which has something to do with the believability. In other words, if a fellow is convicted, say, of riding on the wrong side of the street, that doesn't necessarily mean that everybody that rides on the wrong side of the street is a liar. On the other hand, if he is convicted of perjury, then you know that a perjury conviction means that a man is not telling the truth and that is relevant to what you are determining.

So you look into the background of the conviction which was testified to, assault in one case as I recall it, and robbery and other crimes of that nature, and then you determine after you know that, how much you are going to believe this fellow, keeping in mind the conviction that you are aware of.

Now, ordinarily witnesses may only testify as to what they themselves have learned by the use of their senses. Experts are allowed. In this particular case it was by stipulation. The expert didn't appear in court but the stipulation was that this man was an expert in hand-

writing and he made certain determinations, namely, as I recall it, that Mr. Garcia's fingerprint was not on a particular document or paper.

Now, he is allowed to give an opinion like that. You are not bound by that opinion. It is only advisory to you. It is not conclusive, but you may consider that opinion in arriving at your findings in this case.

Lastly, on this question of evaluating the evidence, some of you jurors have been taking notes. Now, there are some judges that allow that and some judges that do not allow it. I am one that allows it. I feel this way about it:

I take notes up here, the lawyers take notes, the Court Reporter has been taking notes and many of us learn and remember better when we write something down than when we hear it or see it, and it is an aid to you alone.

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You may not say to another juror, "Look, I got down here that this happened on October 12th and that's it." That's not it. That's only to help you, not to argue with other people about it. But what you can do, and what they have been suggesting to you and what I suggest to you too, now, if you come to a point where someone says "Wait, October 12th, say, well, all right, there is a dispute, my note says Ocotber 12th, I'm sure it is that, but let's go out and find out and ask the Judge and have this read" and we will read it to you and then you will know what the date is.

You may have to change the note you made. So keep that in mind. The notes are only to help you aud not to influence anybody else except yourself, and if there is any question about it, have it read from the minutes.

Now, the next phase that I am going into is the definition of a number of terms. There are a number of terms used here which you may be able to understand because some of them are almost the same as you use in every day life but others are not.

The first I call your attention to, each charge in effect says that the defendant acted unlawfully, knowingly, and wilfuly. Those three words. Unlawful means in this particular case against the Federal statute, and the Federal

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statute we are talking about can be described in three or four ways. It is known as the National Auto Security Law. It is also known as the Dyre Act because Mr. Dyre proposed this bill in Congress and it was passed and given his name because he passed it.

It is known by a number of names. What we are saying here is that we are talking about a law that was passed by Congress and it is alleged that it is unlawful because of that fact. That is what unlawful means in this context. That is why it is a federal crime.

Now, the next one, is knowingly. Well, our whole concept of responsibility in law is based upon the next two words, knowingly and wilfully, because if we didn't have willful power to do or not to do an act, there should be no responsibility on a human being. If what we do we do because we could do nothing else, we shouldn't be responsible for what we do.

But we do have the right to do or not to do something and we will it. Therefore, it is because we make the choice that we are responsible. If we make a choice to violate the federal law, then we are responsible for the sanctions that the federal law imposes.

Now, what do we mean by knowingly? Knowingly means to act voluntarily and intentionally and not because

of mistake, inadvertance, accident or some other innocent reason. Wilful adds to that concept another element.

Wilful means to act knowingly, deliberately and with a bad motive or purpose. It is not necessary that the defendant know that the section of the law is 2312 or 2313. If his conduct offend that section, he then is doing the act wilfully. But the concept that is added here is that he does it with what Romans called the mens rea, the evil mind, the bad purpose, the bad motive.

The next word to which I invite your attention I think needs no great explanation, the word "stolen," because the vehicles must be stolen. As used in the interstate transportation law, this concept includes all felonious takings of a motor vehicles with the intent to deprive the owner of the rights and benefit of ownership.

And so it is the ordinary concept in our every day life of somebody taking something of something that doesn't belong to them from somebody who has not given them permission to do so. That is as simply put as you can do it.

By interstate commerce we mean commerce between two states because these vehicles must move in interstate commerce in order for there to be a federal offense.

Now, there are two variations of this in this case

and I will explain this to you later. I do it now also because I don't think I can repeat it too many times because you must understand this.

In the conspiracy charge the vehicle must not only move in interstate commerce, but the defendant must know that it moved in interstate commerce.

In the other sections of the law, the other eight sections, four of which involve transportation and four involve what the lawyers have been calling concealment, which is sort of a shorthand. There the vehicle must move in interstate commerce. There is not the additional requirement that the defendant know. A very simple example of this concept is this:

If you and I agree to pass a red light on 42nd Street and 7th Avenue, we possibly couldn't agree to do that unless we agreed to pass a red light.

Now, we could pass a red light without agreeing about it and we would be guilty of the crime of passing the red light, but we would not be guilty of the conspiracy to pass a red light because we did not agree on it beforehand.

We must know that we are going to pass a red light in order for someone to conspire to pass a red light.

I will touch upon this again when we get to the charges themselves.

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What do we mean by moving in interstate commerce, because the indictment here contains this phrase? After a period of time, and depending upon what is done with the motor vehicle, it may no longer be correct to treat it as part of interstate commerce. The length of the time and the persons and the circumstances and the handling of the motor vehicle are all things which you must take into consideration.

In determining in fact that the motor vehicle was moving in interstate commerce as alleged by the government, it is recognized, however, that the interstate movement of an automobile does not necessarily cease when the automobile stops and the transportation ends. The sale, the concealment, the storage or other disposition after the transportation made be so tied up with the theft and the transportation as to constitute the final step of a continuous unlawful movement.

Now, the next definition I would invite your attention to is the definition of conspiracy, and this is a law that was passed by Congress also.

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This law says, insofar as it applies to our case:

"If two or more persons conspire to commit any offense against the United States and one or more of such persons do any act to effect the object of the conspiracy, each is guilty of the conspiracy."

I will define conspiracy law at a later time, but this is the definition of conspiracy as passed by Congress and it defines what a conspiracy is.

Now, the government doesn't charge that everybody in this case did everything that constituted the crime. Certain people did one thing, and other peole did another thing, and the government doesn't contend that any particular individual did everything as far as each of the crimes is concerned.

Where, as it is here, two or more persons are charged with the commission of a crime or crimes, the guilt of one defendant may be established without proof that all the defendants perpetrated every act constituting the offense charged. However, you must give separate consideration to each individual defendant and to each separate charge against him. Each defendant is entitled to have his case determined separately from all other defendants.

In this regard, the fact that a co-defendant

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pleads guilty is not evidence of the guilt of any other defendant, or that the crimes charged in the indictment were in fact committed.

The guilt or the innocence of the defendant on trial must be determined solely upon the evidence introduced at the trial.

When I come to discuss the substantive counts which are in this case, namely, the odd and even ones, 2, 4, 6 and 8; and 5, 7 and 9, and there is one other charge, the first one, conspiracy, with reference to Count number 5, which was discussed by the lawyers, I have dismissed that as to the defendants Baez and Garcia, and I did that as a matter of law. It doesn't help you in finding the facts.

There is still one defendant in this charge and that's the defendant Lecleres.

So that when there are more than one defendant, essentially, what I am saying is that each one doesn't have to do everything that's charged, they can do different things.

Then there is another concept involved in this which is called aiding and abetting. It is not necessary that the defendant Lecleres or Baez or Garcia or Ortas personally did every act charged. A federal statute provides as follows:

"Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, or whoever wilfuly causes an act to be done which if directly performed by him or another would be an offense against the United States, is guilty of a crime."

Well, there is no precise rule as to what constitutes aiding and abetting. It is enough that a defendant in some manner associates himself with the illegal venture, that he participates in it, is something that he wishes to bring about, or that he seeks by his action to make it succeed. The one who aides or abets another in the commission of a crime is equally guilty with the person who actually and physically commits it.

Therefore, if you find beyond a reasonable doubt with respect to any count of the indictment in which he is uamed that a particular defendant committed the crime charged or that he aided and abetted another in its commission, you may find that he is guilty of that offense.

There is an area of the law which concerns:

What happens when you find someone and he has some stolen property in his possession? How do you rationalize what happens as a result of that? What conclusions can you come to?

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The possession of a motor vehicle recently stolen if not satisfactorily explained is a circumstance from which you may reasonably draw the inference that the person in possession knew that the motor vehicle had been stolen. The term "recently" is a relative term which has no fixed meaning.

Whether a motor vehicle may be considered as recently stolen, depends upon the facts and circumstances shown by the evidence. The longer the period of time since the theft, the weaker the inference which may be drawn from an unexplained possession.

If you find from the evidence beyond a reasonable doubt that the motor vehicle described in the indictment was stolen, and that while recently stolen, the motor vehicle was in the possession of the defendant under consideration, you would be justified in drawing from these facts the inference that the defendant had knowledge that it was stolen, unless the possession of the recently stolen motor vehicle was satisfactorily explained by other facts and circumstances in the evidence.

Now, the possession doesn't actually have to be actual possession. The possession described can be constructive possession. Actual possession is where you physically hold something and are able to control it, like I control this glass at this time. I have actual possession of it.

Constructive possession is the ability to exercise dominion over a particular object. I don't know whether my -- yes. There is a book over there that belongs to me, my own personal property. These here, most of them belong to the government. One of them is mine.

Now, I don't have it actually before me here and I don't have it in my hand, I therefore do not have actual possession of it, but I have constructive possession of it, because all I have to do is to say to my law clerk, "Bring the book over here," and he brings the book over here, and while he has it, he has actual possession, although he is not even the owner.

The concept of possession does not depend on ownership. The concept of possession doesn't necessarily mean the owner has it. Because as he brings it over here he is not the owner of the book, it is my book. But while he brings it over here he has actual possession of it and when he give it to me, I have constructive possession of it up until the time he gives it to me.

What is the importance of that in this case?

Well, if you believe the testimony of the so called crooks, they were told by Lecleres, for example, to do this and to do that with the cars. Now, many times they did not physically turn the car over to him and many times

they did not actually hand it over to him, but he directed it. For example, as I recall it, and this is subject to your finding, one time when they came with the car, he said to the man that brought the car, bring it over to the Cortlandt store. Now, that's possession of Lecleres, even though he wasn't in the car and he wasn't driving the car, since he had the right to exercise dominion and control over it, and he did in fact exercise dominion and control over it, he has possession.

And then you may consider this rule which I was just speaking about, what the effect of that is.

Now, what is a conspiracy? This is the law of conspiracy now, because this is the first count of the indictment which charges a conspiracy. And it charges all of the four persons that are before you here as well as the witness Matos. You don't have to make a judgment on Matos. He's already pleaded. Your judgment will concern the four defendants that we have here. And so what is this first charge we are talking about? What is the law concerning it?

Actually, the word defines itself, if you understand Latin, and since most of you don't, I presume, conspiracy comes from the Latin word conspirae. Con- means with, spirare, which is a Latin word, means to breathe. So what we are saying is people that breathe together. There is a

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sense of secrecy about it. Something like football players in a huddle and they don't want the other fellows to know what they are doing, they are huddled up there and they are conspiring the next play. It's this breathing together.

Now, a conspiracy is a combination of two or more persons to accomplish an unlawful purpose or an unlawful purpose by unlawful means. While it involves an agreement to violate the law, it is not necessary that the persons charged meet together, enter into an express or formal agreement, or that they state in words or writing what the scheme is or how it is to be effected.

It is sufficient to show that they tacitly came to a mutual understanding to accomplish an unlawful act. Such an agreement may be inferred from the circumstances and the conduct of the parties, since ordinarily a conspiracy is characterized by secrecy.

In determining whether a conspiracy existed, you should consider the actions and the declarations of all the alleged participants. Mere association does not establish a conspiracy, nor is knowledge of a conspiracy alone, without participation therein, sufficient to constitute membership.

What is necessary is that the defendant under consideration participates with knowledge of at least some

of the purposes of the conspiracy and with the intent to aide in the accomplishment of the unlawful end. He cannot be bound by the acts or declarations of another participant until it is established to your satisfaction beyond a reasonable doubt that a conspiracy existed and that he was one of the members.

To be a member of the conspiracy a defendant need not know all the other members nor all the details of the conspiracy, nor the means by which the objects were to be accomplished.

Each member of the conspiracy may perform separate and distinct acts. It is necessary, however, that the government prove beyond a reasonable doubt that the defendant was aware of a common purpose and was a willing participant with the intent to advance the purpose of the conspiracy. One who knowingly and wilfuly joins -- and you will recall I defined those terms for you-- an existing conspiracy is charged with the same responsibility as if he had been one of the instigators of it. The extent of the defendant's participation is not determinative of his guilt or innocence.

A defendant may be convicted as a conspirator even though he plays a minor part in the conspiracy. His financial stake, if any, in the venture is a factor to be considered in determining whether a conspiracy existed and

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whether he, the defendant, was a member of it.

If it is established beyond a reasonable doubt that a conspiracy existed and that the defendant was one of its members, then the acts and declarations of any other member of such conspiracy in or out of the defendant's presence, done in furtherance of the object of the conspiracy and during its existence, may be considered as evidence against such defendant.

When persons enter into an agreement for an unlawful purpose they become agents of one another. However, statements of any conspirator which are not in furtherance of the conspiracy or made before it existed or after it terminated may be considered only as evidence against such particular individual.

It is not necessary that all of the overt acts charged in the indictment were performed. One overt act is sufficient. An overt act means any act committed by one or more of the conspirators to accomplish a purpose in the conspiracy. It need not be a violation of the law and the other conspirators need not join in it or even know about it. It is necessary only that such act be in furtherance of the object of the conspiracy.

An example I gave you of that is, for example, if I conspired with my law clerk and I am sure he is not

not aiding and abetting me at this time to rob a bank, and I say, "All right, I will meet you there with a car tonight, at such and such a corner in front of the bank and you go to the 5&10 and get a flashlight so we can see what we are doing, and get a crowbar," and he goes to the hardware store and he buys a crowbar and buys a flashlight, neither of those acts are illegal. Anybody can go in the 5&10 and buy a flashlight or go in a hardware store and buy a crowbar.

But when we have the agreement to go and rob the bank and we are going to use these in furtherance of robbing the bank, that overt act is sufficient to constitute the completion of the conspiracy.

And that's all the overt act means. It doesn't have to be an illegal act, it may be an innocent act. And the government doesn't have to prove one overt act for each defendant, not at all. Any one of them could commit the act.

So now we come down -- I have explained to you the definitions in the law and now we are going to go into the indictment and see what you have to have proved to you before you can convict these defnedants.

This, of course, must be by credible evidence beyond a reasonable doubt, so if you put that diagram up there -- does anybody want a five minute recess at this time?

(No response.)

Well, the indictment I am holding in my hand, and you are going to get a copy of it, the forelady will get it and then everyone of you can look at it, because the reason we are giving it to her is when you get all through, alongside of each charge you can write your finding, guilty or not guilty, it will be easier for you to report the verdict, because as each one is named in the count it is in here.

This is the count the grand jury acted on. The first count which is starting with the first page describes the conspiracy count.

Now, the indictment charges in the conspiracy count thatthe violations of the law which we are talking about are sections 2312 and 2313 of Title 18, and that is the subject of the conspiracy. This is what they were conspiring to violate according to the charge.

And 2312, insofar as it applies to this case, reads as follows -- it is very short:

"Whoever transports in interstate commerce a motor vehicle knowing the same to have been stolen shall be guilty of a crime."

In the second section -- those are the even counts by the way, in this indictment, 2, 4, 6 and 8 -- and the other

one is 2313:

"Whoever receives, conceals, stores, barters, sells or disposes of any motor vehicle moving as, or which is a part of, or which constitutes interstate commerce, knowing the same to have been stolen is guilty of a crime."

And those are the odd numbers. The shorthand used by the lawyers, and I think Mr. Garcia particularly, was "concealing" and so when I use the word "concealing," I am not only using the word "concealing," but I am using the rest of the words that are in the statute.

Now, the government doesn't have to prove each one of these. If the government proves any one of them, receiving or concealing or storing or bartering or selling or disposing, that is sufficient to constitute the crime in 2313. I will explain that to you when we come to the specific numbers in this odd-numbered count.

We are talking now about the first line on there which says"Count 1, conspiracy to violate Sections 2312 and 2313" and that names all the defendants, Lecleres, Baez, Garcia and Ortas.

Now, what do you have to do in order to find the defendant guilty on this charge?

WEll, we will go through the various elements that are in the indictment and you must find each one of

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these by credible evidence beyond a reasonable doubt.

If you cannot find each one of them, and you find most of them, but not one or all or some of them have been proven, then if you find that that's the case, that one or more or all of them have not been proven then you must acquit the defendant.

If you find that the government has proven each one of these elements by credible evidence beyond a reasonable doubt, it is then your obligation to convict the particular defendant you are considering.

You will recall I told you you must consider each charge separately. Make a judgment on each charge, and each defendant separately, each one of them is entitled to his own consideration based on the evidence as it applies to him, and you will consider his case and consider each one separate.

Now, the first thing you must find is that it happened from on or about January 1st to the filing of the indictment, which is --what date is the filing of the indictment?

MR. BUCHWALD: March 29, 1974.

THE COURT: March 29, 1974.

I am putting on the back of this:

"Filed March 29, 1974."

Now, that doesn't mean that the government has to

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prove that it was over that whole period, but it must be in between those two dates. So that that's the first thing you have to find.

Then the next thing is that it is in the Southern District of New York and I have already told you that I have taken judicial notice of the fact that these locations that were described in this testimony up in the Bronx and so forth are within the Southern District of New York.

Then it names the defendants and then it uses those three words that I was talking about to you:

Unlawfully, wilfuly and knowingly.

And you remember the definition of those words. That simply means, very succinctly put, against the federal law, voluntarily, not because of mistake or in good faith and with a bad motive.

Then it goes on to say, did combine, conspire, confederate and agree, and that's the conspiracy charge that I defined for you and a aconspiracy has been defined--acted together with each other and with other persons to the grand jury unknown to commit offenses against the United States, namely, violations of Sections 2313 and 2313 Title 18 and I have described those sections to you.

The conspiracy charge is the first paragraph. The other paragraphs which follow that which are 2, 3 and 4

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are the means that the gove[illegible]ent says that the defendants used to accomplish this conspiracy.

The government need not prove all of the means. If the government proves one of the three means that are named in here and you can read them and I will go over them a little with you, then if all twelve of yo[illegible]gree on the same means, then that would satisfy that portion of the requirement.

Now, the second paragraph which is the first means used is talking about transportation. The second means is talking about the concealing part, which is 2313 And the fourth one is the altering of cars and it essentially concerns portions of what would be 2313, and if anyone of those means has been accomplished or that was part of the agreement then of course that element would be satisfied. It doesn't have to be accomplished. It doesn't have to be successful, a conspiracy, in order to be convicted of a conspiracy because that's separate and apart from the law itself.

Congress has considered that the agremeent of people to commit an offense against the United States where they combine together and become more in number, that is of sufficient importance to constitute a federal crime. They made tha[illegible]rate and apart. It doesn't make a bit of

difference whether they ever succeeded in actually stealing a car or bringing it down. If they agreed to do it and they performed an overt act in furtherance of it, then the conspiracy violation is completed at that time regardless of whether it succeeds or not.

Then in order for it to be concluded, however, an overt act must be done by one of the co-conspirators, if you recall.

Then they name a number of overt acts which are five in number.

Now, the government doesn't have to prove all of them. It can prove any one of them. As long as you are all satisfied, all twelve of you, as to any particular one, then of course that would be sufficient.

Now, in this particular area, when you get through with the overt acts and you don't have to vote on any particular overt acts. What you do is vote on the whole Count 1 as a conspiracy, either you find that they committed the conspiracy or they have not. You don't have to vote on the overt acts or you dn't have to vote on the means.

Is that clear to you, Madam Forelady?

THE FORELADY: Yes.

THE COURT: All right.

Now, I made distinctions before, earlier, when I

I was talking to you about the traffic light. In this particular charge, unless the defendants knew that the cars were moving in interstate commerce, as I have defined it to you, they may not be convicted of this conspiracy charge, even though it is possible for you to convict them under the substantive charges, the other counts that are in the indictment. They must know that in order to satisfy the legal elements of this particular crime.

So that if you find that the government has proven all these elements by credible evidence beyond a reasonable doubt, then you should convict the defendant of the charge of conspiracy, particular defendant you are considering.

Don't lump them all up together; consider them separately.

If you find that the government has failed to prove any one or more or all of these elements which I have just described to you, then it is your obligation to acquit the defendant that you have under consideration.

We now come to the even-numbered counts, and that is the transportation count, that the vehicles were transported. I will just take one representative count because the same applies to the other three representative counts.

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In other words, 2, 4, 6 and 8 have the same elements of the law. The difference about them is the car involved and the dates involved. But the elements of the law are the same, so you will go through each one of them in the same fashion and make a determination as to the defendants involved in that particular count as to his guilt or innocence, so we start with number 2.

Now, all these even-numbered counts, you will see it on there, involve Lecleres. The other defendants are not involved in the even-numbered counts; the transportation of the cars from Bridgeport or Massachusetts in one case, into New York. That only involves Lecleres, and it is not the government's position that he physically did that himself, it is the government's position that he aided and abetted in that he commanded these people to bring the cars down and therefore he is guilty of the charges in these even-numbered counts.

So what do you have to find then in these even-numbered counts? It starts:

On or about -- the first car which involves the Cadillac, the 1964 Cadillac, it says:

"On or about November 19, 1972," so that you have to find that the transportation took place at or about that time. That doesn't mean the exact date. It means on or

about. Reasonably within that time.

"In the Southern District of New York"-- and that I have taken judicial notice that that garage down on Wales Avenue in the Bronx is in the Southern District of New York -- "the defendant Paito"-- who is the defendant Lecleres, "--unlawfully, wilfuly and knowingly"-- and here again those words mean exactly what I defined before -- --"did transport" -- and transport has the same meaning that it has in ordinary use-- take from one place to another -- --"in interstate commerce"-- from Connecticut to New York, and of course I have taken judicial notice that the two are separate states and therefore that commerce is interstate-- "a stolen motor vehicle namely a 1964 Cadillac" -- and you have to find that it was stolen and he, the owner, came in and testified to that, you will recall-- "knowing the same to have been stolen."

Now, that in this particular case is an element. He must know that the car is stolen and you will have to evaluate the evidence.

The government, of course, contends that he instructed these people to go up there, to go up to Connecticut, sometimes he would point the cars out, sometimes he would not and in this particular case you will recall the testimony about this 1964 Cadillac, what happened at

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that time.

As far as the conspiracy is concerned, you remember all the events that happened. As far as this particular count is concerned, you consider only what happened to the '64 Cadillac.

(Continued on next page.)

Now, did he give orders for that car to be taken? There is no charge that he drove it down himself. There is no charge that he received it manually, physically; but there is a charge that he aided and abetted. You will have to make a determination on that.

Now, if he did in fact give an order to a man to go to Connecticut and bring that car to New York, then, of course, he would have to know it was stolen because that's what he was directing him to do. This is a big issue in the case.

He denies it. He took the stand. He has a right to take the stand. He denies it. The witness who made this particular -- who got this particular car says he was told to do so by Paito and delivered it to him. You will have to make a judgment on that as far as that is concerned.

The same applies to Count 4. That involves a Cougar also from Connecticut, and all those elements would have to be proven in the same way.

Count 6, that involves the car from Massachusetts, the Dodge Swinger. The same elements will have to be examined by you in the same way.

Number 8, you will see on that diagram there, that involves the Thunderbird, the Ford Thunderbird.

So you will examine the background of each one of

these vehicles and the testimony that has been adduced during the time that these particular vehicles were discussed, and if you find that the government has proven each one of the elements by credible eivdence, beyond a reasonable doubt, it is your obligation to convict the defendants.

On the other hand, if the government has failed to prove any one or more or all of the elements in these even-numbered counts, then it is your obligation to acquit the defendant Lecleres in the count which you have found that the government has not satisfied its proof.

The odd-numbered counts concern what has been used in shorthand here as "concealment," although it includes various other things as I have indicated to you before. It includes receiving, storing, bartering, selling or disposing of any motor vehicle.

Of course, the government doesn't have to prove all of those. It can prove any one or more of them.

Now, as far as the odd-numbered counts are concerned, we will go through the third count and that applies--the same rules apply as to 5, 7 and 9.

The first the government would have to prove in number 3 is thatit happened on or about October 19, 1972. You will notice these counts are paired. 2 is paired with 3 because it involves the same vehicle. One deals with

transportation, the other deals with concealment; two different sections.

So the date has to be the same as to both of them, except that in the concealment it may continue on from the day the car was transported to a further date and the dates are named in the indictment.

You will have to find that the concealment was within that period.

For example, in the first count, if you look at that chart up there, Count 3 says that from November 19, 1972 -- that's the date the car was stolen -- through or on or about March 15, 1973. So that the concealment must be within that period.

When you go to Count 5, there is a different period. That period is from February 6th, as you will see in the diagram up there, 1973, to about April 17, 1973, and that must be within that period.

You go to Count number 7, and you see the period there is from March 14, 1972 to April 15, 1972.

In Count 9 the period is from the date that it was stolen, namely December 30, 1972 until August 13, 1973.

So as you continue on to consider the odd-numbered counts it must be on those dates.

The defendant Lecleres is charged in the third

count together with Ortas, so that as far as Count 3 is concerned you have to make a judgment about Lecleres and Ortas, whether they were guilty of that particular crime. Here they must act unlawfully, wilfuly, knowingly and wilfuly, and I have defined those for you before.

They must either have received, concealed, stored a stolen vehicle, because that is the charge in here. Any one of the three of them or all of them or any combination of them. And the vehicle involved is a Cadillac, 1964 Cadillac in Count 3.

Now, you may say, well, somebody said or one of the lawyers said they didn't put it in a tunnel or a bag or a suitcase, some expression. Well, concealment doens't only mean that you put it in that kind of a situation.

If you have a motor vehicle, this particular motor vehicle for example, and you change the vin nubmers on it and you put another vin number on it so if anybody looks at it they think they are looking at a legal car when in fact it is a stolen car, that's concealment because you can't tell by looking at those numbers that that car was in fact stolen, so you are really concealing the identity of the car. That is the concept of concealing in this particular case.

So that you will have to determine from the

evidence in the case yourself whether in fact these numbers were changed, and if they were changed, whether that resulted in a concealment.

Then the particular motor vehicle in question is the Cadillac, 1964, and the fact that it was part of and moving in interstate commerce, I have already indicated to you what that is and you know the definition of that, moving in interstate commerce.

Knowing the same to have been stolen. Here again, the defendant must know that it was stolen. The government's position, of course, is that he gave directions for this and therefore he must have known that it was stolen. He sent them up there, sometimes pointed out cars. In this particular case I don't remember the facts. You will have to recall them and figure out what part the defendant Lecleres had in this and what part the defendant Ortas had in it, and then come to a determination as to whether or not they knew, in fact, that the car was stolen.

So consider each defendant separately, come to a separate judgment on them as to Count 3.

As to Count 5, I have already dismissed the charges as against Garcia and Baez. So the only one that you consider on Count 5 is Lecleres.

As to Count 7 we have Lecleres, Baez and Garcia

as defendants, and you will consider each one of them separately and make a determination going through the elements just as I have described to you on the other odd-numbered counts. That also applies to Count number 9, which charges Lecleres, Baez, Garcia and Ortas. That charges all four defendants.

So that you have two counts here which charge all the defendants; namely, the first and the last, the conspiracy count and Count number 9.

And you will go through the elements in that particular count, treating each one separately for the purpose of making a judgment. Then if you find that the government has proven one or more or all of these elements by credible evidence beyond a reasonable doubt you should convict the defendant you are considering where you find that to be the case.

If you find the government has not proven any one or more or all of the elements as to the particular crime as to the defendant you have under consideration, then you must acquit the defendant.

That is generally the way you go through the indictment.

And I only have a few more words to say to you, and that concerns things that have nothing to do with what

should affect your judgment.

For example, sympathy or bias. That has nothing to do with finding the facts in this case. We may feel sorry for some of these people and we may be mad at some of these people. It is a judgment a human being makes when he hears something, talks to them or observes them. That kind of thinking on your part should not be part of coming to a judgment as to whether they are guilty or innocent.

Divorce your minds from any thought of sympathy or bias. Decide this case without fear or favor to anyone. Decide it as your conscience dictates.

Punishment, if it becomes necessary in this case, is not the function of the jury. It is the function of the Court and it cannot possibly help you in determining what the facts are in the case, so you will not consider what, if any, punishment could be visited upon anybody.

Madam Forelady, your verdict must be unanimous as to each of these counts, each one of them. There is no quotient verdict in a criminal case in this court. All twelve of you must agree, and you will indicate alongside of each of these counts the disposition as to each one so you will be able to report it to the court clerk when you come in.

Now, consider the totality of the evidence in the case and listen to your neighbor and don't make up your mind

as soon as you go in there. Start to think about the case and don't come to a conclusion before you even think about it. Just discuss the case and then as you get along you will finally come to a point where you are able to make a conclusion and that should be in accord with your conscience.

The verdict will be reported by the forelady and in addition to that she is also the one who communicates with the Court in writing, if anything arises.

If anybody wants any testimony read or anything else comes up which the Court can assist you with, the forelady will write the note out, she will sign it, put it in a sealed envelope, and give it to the marshal who will then give it to me and I will then consider it.

If for any reason you come back and you are divided in some way about how you feel about the case, do not report any divisions. In other words, the only time you report is at the end when you all agree as to what you agree upon. Do not report what is happening inbetween.

As far as the conspiracy count is concerned, you don't report on any parts of it. The only thing you report on is whether they are guilty or not guilty of the conspiracy charge. You don't have anything to do with the means or the overt acts or anything like that to report what your thinking was on that. You must be satisfied, as I have indicated

before, but you only report the general verdict of guilty or not guilty on the conspiracy.

You don't have to report as to the overt acts, which ones you considered, and so forth.

As I said before, I have on last time to talk to the lawyers and I will do that now. If you will excuse me, we will then continue on, and at which point the case will be turned over to you.

(At the side bar.)

THE COURT: We will start in with Lecleres.

MR. GARCIA: Just my opinion on here as to the 5th Count, which was dismissed as to the two persons, Baez and Garcia. They were dismissed as a matter of law, I understand that. Do you feel that it could be said to the jury that it is not your opinion that he should stand -- that Lecleres is guilty but they should decide it on the facts?

THE COURT: I think I said that. You can note that as an exception. I will note it.

Any other exceptions?

MR. GARCIA: That's all.

MR. AIDALA: Next would be Baez.

THE COURT: Mr. Aidala.

MR. AIDALA: I object to that part of your charge

on circumstantial evidence in which you did not explain to the jury that it is subject to an interpretation which is innocent as well as an interpretation --

THE COURT: Have you read our district on that? Judge Mansfield wrote on it and says it doesn't apply to this district. If you want an exception, the Supreme Court may reverse the verdict.

MR. AIDALA: I wanted it noted, Judge.

THE COURT: Fine.

MR. AIDALA: I object to that portion of your charge referring to the witness Rivera, and specifically to your Honor's suggesting to the jury that she in fact had bought a hot car knowing that it was in fact a "hot car" and that is the explanation for her not having the receipt.

THE COURT: I note the exception.

MR. AIDALA: I would also object to that part of the charge referring to statements of the defendants in which your Honor indicated that if they were to find that they were false, that it would be something they can consider insofar as consciousness of guilt is concerned. What I object to is what your Honor did not state; namely, how they could apply a finding on their part that the statements were in fact true.

THE COURT: I think I made it clear that if it

were true they could accept that.

MR. PANZER: I can't think of any now. I'm sure I will afterwards, but I can't now.

MR. EVANS: No exceptions.

MR. BUCHWALD: One brief thing. That is perhaps an instruction on charts.

THE COURT: I think that is very clear. There is only one thing I didn't add here and I am loathe to do it now, because I think it would stress it too much,and that was that the defendant Lecleres took the stand -- I did mention that. It was something else.

MR. PANZER: ABout the possession?

THE COURT: No.

Interest. The defendant's interest, but I don't want to do that now because it will just stress it. I am going to let it go by the boards.

All right.

(In open court.)

THE COURT: Mr. Ramos, I want to thank you for your service to the Court. At this time I am obliged under the statutory provisions of Congress to excuse you because the jury is about to deliberate. I do, however, do it with the thanks of the Court. I appreciate your service.

I once had a jury that went out about 11 o'clock--

I didn't talk as long that time -- about 5 o'clock in the afternoon. I told the clerk, "Would you please go in there and find out what is happening to them? Did they die out there or what happened?"

He came back and said, "Judge, you have been telling them not to discuss the case and they have just been sitting there looking."

Please, don't do that. Discuss the case. Talk with each other, come up with a verdict that is in accord with your conscience and that is all that you are asked.

(Marshal sworn.)

(Jury retires to deliberate at 11:50 a.m.)

THE COURT: Have I got the permission of the parties to send in any exhibits the jury desires without coming down here?

MR. EVANS: No objection.

MR. GARCIA: No objection.

MR. AIDALA: No objection.

(Time noted 11:52 a.m.)

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R.A.B.

8/16/73
New York City
FBI
12.10 PM

I, Rafael A. Baez, 554 Union Ave. Bronx N.Y.C. I make the following statement to Special Agent Benton FBI, concerning 1957 Ford Thunderbird which was found in my garage – Car Cor Wates, – on 8/13/73 by the FBI

I have going to 11 year High school in the Island P.R.
I can Read English & speaking English
I make the statement on free Will

In December 1972 Rafael Matos he brought the Car – 1957 Thunderbird – To Have Fix the Hos. For one moth the car was left at Cor Wates & on 1-10-73 Ramon Garcia – my – Business partner – State a Lien on the car.

ONLY COPY AVAILABLE

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I HAVE NOT SEEN FURTHER NOTES SINCE THIS TIME.

I, RICHARD BARTEL DO NOT KNOW OF ANYTHING IN DISHONEST OR UNLAWFUL.

I HAVE READ THE ABOVE, WHICH IS THIS PAGE & 1 OTHER. THIS IS TRUE & NO THREATS OR PROMISES HAVE BEING MADE TO ME.

/s/ Richard Bartel

Richard John Bartel
special agent FBI NYC 8/16/73.

CANNELLA, J. 365

JUDGMENT AND COMMITMENT (Rev. 2-68) A 85 Cr. Form No. 25

United States District Court

FOR THE

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NOV 6 - 1974

United States of America

v.

AEL AEZ

No. 74 Cr. 513

On this 6th day of November, 19 74 came the attorney for the government and the defendant appeared in person and[1] by Louis Aidala, Esq.

IT IS ADJUDGED that the defendant upon his plea of[2] not guilty, and a verdict of guilty.

has been convicted of the offense of unlawfully, wilfully and knowingly, combined, conspired, confederated and agreed with others, to commit offenses against the United States, to wit, to violate Title 18, U.S. Code. Secs. 2312 and 2313. (Title 18, U.S. Code, Secs. 371, 2312, 2313 and 2.)

as charged[3] in counts 1,7 & 9

and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of[4] TWO(2)YEARS ON each of counts 1,7 & 9 to run concurrent with each other.

IT IS ADJUDGED that

IT IS ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

John M Cannella, United States District Judge.

commitment to[6] Raymond F. Burghardt, Clerk.

[1] Insert "by counsel" or without counsel; the court advised the defendant of his rights ... desired to have counsel appointed by the court, and the defendant thereupon ... the court being satisfied ... right to the assistance of counsel." [2] Insert (1) "guilty and the court being satisfied ... (2) "not guilty, and a verdict of guilty," (3) "not guilty, and a finding of ..." as the case may be. [3] Insert "in count(s) number " if required ... if any; (2) whether sentences are to run concurrently or con... to begin with reference to termination of preceding term or to ... (3) whether defendant is to be further imprisoned until payment of ... discharged as provided by law. [5] Enter any order with respect to ... court to recommend a particular institution.

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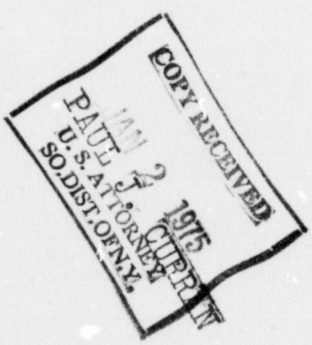
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